

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ROBERT SANGO,

Plaintiff,

Case No. 2:15-CV-105

v.

HON. GORDON J. QUIST

TODD BASTIAN, et al.,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

On March 3, 2016, Magistrate Judge Timothy P. Greeley issued a Report and Recommendation (R & R) in which he recommended that the Court grant Defendants' motion for summary judgment because Plaintiff failed to exhaust his administrative remedies. Plaintiff filed an objection, arguing that he exhausted all available remedies because Defendants removed his grievance from the mailbox. After conducting a de novo review of the R & R, Plaintiff's Objection, Defendants' Response, and the pertinent portions of the record, the Court concludes that the R & R should be adopted.

Plaintiff acknowledges that he did not file a grievance concerning the issues in this case, but argues that he exhausted his available administrative remedies because Defendants took his completed grievance out of the mailbox. Plaintiff allegedly completed a grievance on August 3, 2015, and then filed the complaint in this case one week later. During that one week period, Plaintiff filed two grievances unrelated to this action. Thus, even assuming that Plaintiff's allegations regarding the removal of his grievance are true, the grievance process was nonetheless available to Plaintiff during the days leading up to the filing of his complaint. Accordingly, the

Court concludes that Plaintiff failed to exhaust his available administrative remedies, and need not decide whether Plaintiff could have appealed the grievance to Step II or whether Defendants violated the grievance process. The Court further rejects Plaintiff's argument that he was not afforded an opportunity for discovery, as discovery is not necessary to determine exhaustion in this case.

Therefore,

IT IS HEREBY ORDERED that Report and Recommendation issued on March 3, 2016 (ECF No. 27) is **ADOPTED**.

IT IS FURTHER ORDERED that the Defendants' Motion for Summary Judgment (ECF No. 18) is **GRANTED**. Plaintiff's claims are **DISMISSED without prejudice**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment (ECF No. 10) is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Temporary Restraining Order (ECF No.7) is **DENIED**

Dated: April 14, 2016

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE